

BEFORE RAILWAY CLAIMS TRIBUNAL,
PATNA BENCH

Coram : Mr. Sanjay Singh Gehlot, Hon'ble Vice-Chairman /
RCT/Kolkata at Circuit Bench
Mr. S. D. Sharma, Hon'ble Member (Judicial)/
RCT/Kolkata at Circuit Bench

Claim Application No. OA(IIu)/PNBE/0140/2020

Date of filing of claim application : 02.04.2019

Date of Judgement : 11.04.2025

1. Tetari Devi, wife of the deceased, Manoj Das
2. Shivani Kumari, minor daughter of the deceased, Manoj Das
3. Suman Kumari, minor daughter of the deceased, Manoj Das

Residing at :

Vill. Kharagpur Tola, Girdhari Bigha, P.O. Samaspur,
P.S. Belaganj, Dist. Gaya 804403

..... Applicant

-VS-

Union of India represented through

The General Manager, East Central Railway, Hajipur..... Respondent

1. Munu Das, father of the deceased, Manoj Das(Proforma Respondent)
2. Asha Devi, mother of the deceased, Manoj Das(Proforma Respondent)

Claim for Rs.8,00,000/-

Advocates : Shri P. K. Gupta, Ld. Counsel for the Applicant.
Shri Alok Kumar, Ld. Counsel for the Respondent.

निर्णय

JUDGEMENT

1. This application has been filed under Section 16 of Railway Claims Tribunal Act, 1987 read with 124-A of Railways Act, 1989 by the applicants i.e. wife and minor daughters of the deceased, Manoj Das for

compensation on account of death of the victim, who allegedly died in an Untoward Incident.

2. Brief history of the case of the applicant is that on 16.10.2016 the deceased was going from Koderma to Gaya by Asansol Gaya Passenger Train after purchasing 2nd class ticket. In the course of his travel he fell down from the said running train near Koderma and he became seriously injured and thereafter the deceased was brought to Koderma Hospital and thereafter he was referred to Medical Hospital, Gaya and then he was brought to Private New Central Hospital, Gaya and finally he was brought to PMCH, Patna for better treatment where he died on 17.10.2016. Ticket was lost after the incident. On the basis of Fardbayan of Munu Das, UD case No.33/16 dtd.31.12.2016 was registered in Koderma Railway PS.

3. The respondent railway has filed a written statement denying the facts stated in the claim application. It is a well settled principle of law that the burden of proof of the events or matter in dispute is always on the claimant who seeks judgement as provided by Section 101 of the Indian Evidence Act. The respondent has emphatically denied the entire story as narrated by the claimant and not admitted the death of the deceased due to untoward incident. As per the inquest report recovery of any things/articles/bags which creates doubt that the deceased was a valid passenger. It was also submitted that police in the final report referred to two witnesses - Niranjan Pandit @ Niraj Kumar and Santosh Goswami. But as per the DRM's report, Niranjan Pandit @ Niraj Kumar had given statement before Mr. Vinod Kumar (ASI/RPF/Koderma) that he had no knowledge about the untoward incident and he did not give



any statement to anybody either in writing or in oral evidence. The respondent pleaded that the events did not come under the purview of Section 123(c) (2) of Railways Act, 1989. Thus, the respondent prayed for dismissal of the case.

4. We have perused the claim application as well as the written statement filed by the Railways. Based on the above pleadings and material evidence placed on record, the following issues were recast for determination and adjudication in this case :

Issues :

1. Whether the incident on account of which the victim is alleged to have died can be termed as an Untoward Incident as defined under Section 123(c)(2) of the Railways Act, 1989 ?
2. Whether the victim was a bona fide passenger of the train on the date of incident, as alleged ?
3. Whether the applicants are the sole dependents of the deceased in terms of Section – 123 (b) of Railways Act and are entitled to get compensation from the respondent ?
4. Relief, if any.

4.1 In this case, Tetri Devi, wife of the deceased, tendered into evidence the affidavit. She filed certain documents which were exhibited. She was cross-examined as AW/1 by the Ld. Counsel for the respondent.

4.2 The respondent filed DRM's report which was exhibited as R/1.

17/11

18/11

5. In order to avoid repetition of appreciation of evidence, and for the purpose of brevity, issue no. 1 & 2 are taken up together for the purpose of discussion and orders.

Issue No. 1 & 2 :

6. The issue as to whether the deceased was a bona fide passenger shall be taken into consideration first. As per the claim application the deceased was travelling from Koderma to Gaya by train and the journey ticket was lost after the incident.

6.1 Tetri Devi, wife of the deceased filed an affidavit affirming the facts contended in the claim application. She was examined and cross-examined as AW/1. As per her evidence in court, she deposed that she did not know the date and time of the incident. She, father in law and brother in law reached the spot. No ticket was found from the deceased. Nothing was found from the deceased. The deceased was travelling alone. After boarding the train, the deceased never contacted her over telephone. She did not have any knowledge about the deceased purchasing a ticket, boarding a train or falling from a train.

6.2 As per the evidence of the wife of the deceased before Court, no ticket was found from the deceased. She again stated that nothing was found from the deceased. On one hand, the deceased is stated to have been travelling from Koderma to Gaya and on the other hand, it has been well established that nothing was found from the deceased including a journey ticket etc. If the deceased was travelling by train at all, something would have been found from the deceased.

Mr

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6.3 In the case Union of India Vs Rina Devi Hon'ble Apex Court held that burden of proof regarding availability of ticket will shift to the railways provided an affidavit is filed with relevant facts that ticket was purchased but lost. Here in this case, no specific affidavit was affirmed by the applicant about loss of journey ticket. Hence the burden of proof has not shifted to the railways.

6.4 Besides, we do not agree with the contention of the Ld. Counsel for the applicant on the point that the onus is always on the Railways to prove that the deceased was not a bona fide passenger. To our mind there must be some reason to believe that the deceased was travelling by the train. To our mind there can be no sweeping presumption that in all cases the ticket of every deceased is necessarily lost. We cannot agree with the arguments of the Counsel that the onus is always on the Railways to prove that the ticket has been purchased in every case. It is seen that nowhere in the case, *Rathi Menon vs. Union of India* Hon'ble Supreme Court held that every person who falls from a train and died as a result of an accidental fall from the train must be presumed to be a bona fide passenger travelling with the ticket. There is no such blanket liberty given to the applicants by any judgement of Hon'ble Supreme Court. As per the facts and circumstances of the case, it is not proved by the applicants that the deceased was a bona fide passenger. The claim application submitted by the applicants definitely lacks honesty.

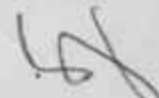


6.5 A Civil case is decided on preponderance of probabilities. Preponderance of probabilities in the present case is that the claimants have failed to prove that the deceased was a bona fide passenger.

Therefore, it cannot be believed that the deceased was a bona fide passenger. _

6.6 Section 124-A of Railways Act, 1989 unambiguously stipulates that compensation for death or injury pertaining to an untoward incident shall be admissible only in a case when the victim will be proved to be a bona fide passenger. To put it simply, the scheme of compensation explicitly requires proof of the victim's status as a bona fide passenger. This scheme of compensation is no doubt a beneficial piece of legislation but it is meant for law abiding citizens & not for free trippers. Now we need to reproduce the Section 124-A of Railways Act -

Section 124-A of Railways Act states that – " Compensation on account of untoward incidents.- *When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall notwithstanding anything contained in any other law, be liable to pay compensation to such an extent as may be prescribed and to that extent only for loss occasioned by the death of, or*



injury to, a passenger as a result of such untoward incident....."

6.7 Section 2(29) of Railways Act, 1989 has defined the meaning of passenger. Section 2(29) of the Railways Act, 1989 defined that "passenger" means a person travelling with a valid pass or ticket;"

Section 123(c) of Railways Act, 1989 sets out that -

"Untoward incident" means -

(1)(i) xxxxxxxxxxxx

ii) xxxxxxxxxxxx

iii) xxxxxxxxxxxx

(2) the accidental falling of any passenger from a train carrying passengers."

The above statutes clearly indicate that the victim who faces an untoward incident must be a passenger of a train. In the instant case the applicant could not prove the travel of the deceased at all on train.

6.8 In Appreciation of Evidence in Civil Cases it has been introduced that - "Evidence is the currency by which one fulfils the burden of proof. In order to arrive at a decision in civil, criminal or administrative cases to establish and prove the matters of defence or mitigation or to overcome a prima-facie case or presumption the essential question which one needs to

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answer is whether the evidence placed before them meets the required parameters or adequate enough to give such evidence."

6.9 Section 101 of Indian Evidence Act 1872 bears the heading "Burden of Proof". It reads as follows : "Whoever desires any Court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist".

When a person is about to prove the existence of any fact, it is said that the burden of proof lies on that person."

6.10 Here, in the instant case, the applicant did not produce any cogent evidence to prove the bona fide of the deceased either by adducing oral evidence or by producing the documents which were relied upon by the applicants. In view of Section 101 of Evidence Act, quoted above, it is absolutely explicit that the burden of proof was upon the applicant to prove the case. But the applicant has miserably failed to prove the case regarding the travel of the deceased on a train and that he was a bona fide passenger. The loss of ticket appeared to be a story of concoction and fabrication in establishing that the deceased was travelling in the train.

6.11 It is indisputable that the purpose of Section 124A of the Act is to provide a speedy remedy to an injured passenger or to

the dependant of the deceased passenger involved in an untoward incident. Though the provision relating to the payment of the compensation in the Act can be said to be a piece of beneficial legislation, it cannot be stretched too far to reward a person who has not come with clean hands. Definitely this provision has been enacted as a piece of beneficial legislation for the injured person or the dependents of the deceased who is a law abiding citizen. This tribunal is committed to awarding compensation to the injured or the dependants of the deceased who are rightfully entitled to benefit under Section 124A of Railways Act, 1989. Simultaneously, it is also the tribunal's duty to safeguard the Government exchequer by screening out fraudulent claims.

6.12. As far as the issue whether the incident occurred due to an untoward incident as defined under Section 123(c)(2) of Railways Act, since, the victim has not been proved to be a bona fide passenger, the alleged incident cannot be considered to be an untoward incident due to his not being a passenger at all. Hence this bench feels that there is no need for further discussion on issue no.1.

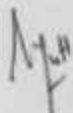
6.13 **No conclusive evidence of bona fide of the victim has emerged.**



7. The Court will always give due cognizance to the best available evidence. Hon'ble High Court of Andhra Pradesh has held in case No.CMA 947 of 2008 (Jetty Naga Lakshmi Parvathi & Others v/s The Union of India) that ".....from Section 101 of the Indian Evidence Act, 1872, it is clear that the applicants, having come to the court asserting some facts, must prove that the death of the deceased had taken place in an untoward incident and that the death occurred while the deceased was travelling in a train carrying passengers as a passenger with valid ticket. Therefore having asserted that the deceased died in an untoward incident and he was having a valid ticket at the time of his death, **the initial burden lies on the applicants to establish the same. The initial burden of the applicants never shifts unless the respondent admits the assertions made by the applicants. Such evidence is lacking in this case.**"

7.1 **In the instant case, it is clear that the applicant could not adduce cogent evidence to prove that the deceased was a bona fide passenger and that his death was caused by injury due to a fall from a running train.**

7.2 Considering the factual elements coming out from the discussion, these issues are held against the applicant by holding that there was no untoward incident as defined under Section 123(c)(2) of the Railways Act, 1989 involving the victim.

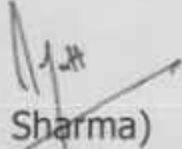


Issue No.3 & 4 :

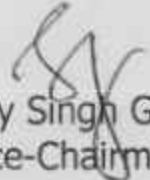
8. The applicants have failed to prove Issue Nos. 1 & 2. Hence, these issues are superfluous to discuss.

ORDER

The case is dismissed with no order as to costs.


(S. D. Sharma)
Member (Judicial)




(Sanjay Singh Gehlot)
Vice-Chairman

